UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/79/Add.34
18 April 1994

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Fiftieth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

El Salvador

1. The Committee considered the second periodic report of El Salvador (CCPR/C/51/Add.8) at its 1310th to 1313th meetings held on 4 and 5 April (CCPR/C/SR.1310-1313) and adopted */ the following comments:

A. Introduction

2. The Committee welcomes the opportunity to continue its dialogue with the State party following a delay in reporting of over 10 years. The second report contained information about constitutional and legal measures giving effect to the Covenant which was supplemented by the core document. The Committee regrets that the second periodic report neither accurately nor candidly represents the actual human rights situation in El Salvador in the period covered by the report, during which armed conflict and massive violations of human rights have been followed by a peace process supervised by ONUSAL. In particular, it provides little relevant information on such key areas as the protection of the right to life under article 6 of the Covenant, the prohibition of torture under article 7, the right to liberty and security of person under article 9 and the guarantee to due process under the law in accordance with article 14. The

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*/ At its 1318th meeting (fiftieth session), held on 8 April 1994.

Committee regrets, in particular, the complete lack of information regarding either the report of the Truth Commission and the implementation of its recommendations or the Amnesty Law and its impact on the State party's obligations under the Covenant.

3. The Committee expresses its appreciation to the delegation for the useful information it provided in response to the list of issues as well as to questions and comments of Committee members. However, the Committee regrets that many questions put to the delegation during the discussion remained unanswered.

B. Factors and difficulties affecting the application of the Covenant

4. The Committee notes that El Salvador has only recently emerged from a long and devastating civil war during which gross and systematic human rights violations occurred and that it is still in the process of recovery and transition to peace.

C. Positive aspects

5. The Committee notes with satisfaction that the human rights situation has improved in El Salvador and that some progress has been made toward the consolidation of peace and the establishment of the rule of law. In that connection, the Committee notes the signing of the peace accords in 1992 and the creation under that accord of the Truth Commission and the Ad Hoc Commission to investigate past human rights abuses, to recommend action against the perpetrators and to avoid a recurrence of such events. The Committee particularly welcomes the establishment of the Office of the Procurator for the Protection of Human Rights and the Office for Information on Detained Persons as well as the primacy accorded in the Constitution to international human rights instruments over domestic legislation. The Committee also welcomes the legal reform undertaken in some areas, notably with respect to the family code and the establishment of family courts, and the limitation of the jurisdiction of military tribunals.

D. Principal subjects of concern

6. The Committee is concerned that, despite the signing of the peace accord over two years ago, the rule of law has not yet been effectively re-established. The Committee expresses concern that human rights violations continue in El Salvador, particularly serious and systematic violations of the right to life carried out by paramilitary groups. In this regard, the Committee notes with alarm that politically-motivated summary and arbitrary executions, death threats and cases of torture have continued to occur since the signing of the peace accord. The Committee also notes that most recommendations of the Truth Commission have still not been implemented. A significant gap persists between constitutional and legal guarantees and the actual application of those legal guarantees. The Committee also notes with concern that the rights

and freedoms in the Covenant have not been fully included in the Constitution.

7. The Committee expresses grave concern over the adoption of the Amnesty Law, which prevents relevant investigation and punishment of perpetrators of past human rights violations and consequently precludes relevant compensation. It also seriously undermines efforts to re-establish respect for human rights in El Salvador and to prevent a recurrence of the massive human rights violations experienced in the past. Furthermore, failure to exclude violators from service in Government, particularly in the military, the National Police and the judiciary, will seriously undermine the transition to peace and democracy.

8. The Committee expresses concern over continuing human rights abuses by the military and security forces. The Committee notes in this context with particular concern the lack of full and effective control by civilian authorities over the military and the security forces.

9. The Committee expresses concern over the fact that high officials of the judiciary have been implicated by the Truth Commission in human rights violations. In that connection, the Committee notes with concern that, until serious reform of the judiciary is undertaken, efforts to strengthen the rule of law and to promote respect for human rights will continue to be undermined. The Committee also notes with concern the lack of support and protection given by the civilian authorities to the judiciary in the performance of its duties.

10. A number of additional concerns remain, including the full and effective application of the Covenant in matters pertaining to the full enjoyment by women of the rights guaranteed under the Covenant and the difficulties encountered in ensuring the full participation of all citizens in the electoral process.

E. Suggestions and recommendations

11. The Committee endorses the recommendations of the Truth Commission and strongly recommends that the Government take immediate steps to fully implement them.

12. The Committee emphasizes the obligation of the State party under article 2, paragraph 3, of the Covenant to ensure that victims of past human rights violations have an effective remedy. In order to discharge that obligation, the Committee recommends that the State party review the effect of the Amnesty Law and amend or repeal it as necessary.

13. The Committee recommends that all necessary measures be urgently taken to combat the continuing human rights violations in El Salvador. All violations should be thoroughly investigated, the offenders punished and the victims compensated. In this connection, the Committee also recommends that the Office of the Procurator for the Protection of Human Rights should be strengthened both with regard to resources and competence in order

to ensure that the Procurator may effectively carry out his or her responsibilities.

14. The Committee recommends that all necessary measures be taken to ensure that human rights are respected by the military. The Committee urges continuing vigorous action to ensure that persons closely associated with human rights abuses do not re-enter the police, army or security forces.

15. The Committee recommends that major reform of the judiciary be undertaken with a view to establishing an independent and impartial judicial system free from political pressure and intimidation which will safeguard human rights and enforce the rule of law without discrimination.

16. The Committee urges that respect for human rights be institutionalized at all levels of the Government and recognized as an essential element of the process of national reconciliation and reconstruction. To that end, the Committee recommends that all articles of the Covenant should be fully incorporated into the national legal system; that comprehensive human rights training is provided to judges, the police and the military; and that human rights education be provided in schools at all levels. The active participation of NGOs in the democratization process should also be encouraged.